

HEMP REGULATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions of Title 4, Chapter 41, Hemp and Cannabinoid Act, to provide clarity regarding existing and developing cannabinoids and regulate production and sale.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows industrial hemp producers to procure background checks through a federal system;
- ▶ requires industrial hemp laboratories to demonstrate the ability to test for delta-8 tetrahydrocannabinol;
- ▶ identifies an unlawful act for a person to:
 - distribute, sell, or market a product that exceeds the acceptable hemp THC level;
 - sell a psychoactive cannabinoid;
 - transport material outside of the state that exceeds the acceptable hemp THC level; or
 - produce, sell, or use a cannabinoid product that is added to an alcoholic beverage or food, enticing to children, or smokable flower;
- ▶ allows for increased flexibility in dosage forms; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

33 **4-41-102**, as last amended by Laws of Utah 2020, Chapters 12 and 14

34 **4-41-103.2**, as enacted by Laws of Utah 2020, Chapter 14

35 **4-41-103.4**, as enacted by Laws of Utah 2020, Chapter 14

36 **4-41-105**, as last amended by Laws of Utah 2020, Chapter 14

37 **4-41-204**, as enacted by Laws of Utah 2018, Chapter 446

38

39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **4-41-102** is amended to read:

41 **4-41-102. Definitions.**

42 As used in this chapter:

43 (1) "Acceptable hemp THC level" means total tetrahydrocannabinol concentration of
44 not more than 0.3% on a dry weight basis if laboratory testing confirms a result within a
45 measurement of uncertainty that includes the total tetrahydrocannabinol concentration of 0.3%.

46 (2) "Cannabidiol" or "CBD" means the cannabinoid identified as CAS# 3556-78-3.

47 (3) "Cannabidiolic acid" or "CBDA" means the cannabinoid identified as CAS#
48 1244-58-2.

49 ~~[(+)]~~ (4) "Cannabinoid product" means a chemical compound extracted from a hemp
50 product or any cannabinoid extracted from any naturally occurring biomass that:

51 (a) is processed into a ~~[medicinal]~~ dosage form; and

52 (b) contains less than;

53 (i) 0.3% tetrahydrocannabinol by dry weight~~[-]~~; or

54 (ii) 0.3% delta-8 tetrahydrocannabinol by dry weight.

55 (5) "Delta-8 tetrahydrocannabinol" or "delta-8 THC" means the cannabinoid identified
56 as CAS# 5957-75-5, having a lower psychotropic potency than delta-9 THC.

57 (6) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified
58 as CAS# 1972-08-03, the primary psychotropic cannabinoid in cannabis.

59 (7) "Derivative cannabinoid" means any cannabinoid that has been intentionally
60 created using a process to convert a naturally occurring cannabinoid into another cannabinoid.

61 (8) "Dosage form" means the form in which a product is produced for individual
62 dosage that is not specified as unlawful in this chapter.

63 ~~[(+)]~~ (9) "Industrial hemp" means any part of a cannabis plant, whether growing or not,

with a concentration of less than 0.3% tetrahydrocannabinol by dry weight.

~~[(3)]~~ (10) "Industrial hemp certificate" means a certificate that the department issues to a higher education institution to grow or cultivate industrial hemp under Subsection 4-41-103(1).

~~[(4)]~~ (11) "Industrial hemp certificate holder" means a person possessing an industrial hemp certificate that the department issues under this chapter.

~~[(5)]~~ (12) "Industrial hemp laboratory permit" means a permit that the department issues to a laboratory qualified to test industrial hemp under the state hemp production plan.

~~[(6)]~~ (13) "Industrial hemp producer license" means a license that the department issues to a person for the purpose of cultivating or processing industrial hemp or an industrial hemp product.

~~[(7)]~~ (14) "Industrial hemp retailer permit" means a permit that the department issues to a retailer who sells any industrial hemp product.

~~[(8)]~~ (15) "Industrial hemp product" means a product derived from, or made by, processing industrial hemp plants or industrial hemp parts.

(16) (a) "Key participant" means any person who has a financial interest in the business entity, including members of a limited liability company, a sole proprietor, partners in a partnership, and incorporators or directors of a corporation.

(b) "Key participant" also includes:

(i) an individual at an executive level, including a chief executive officer, chief operating officer, or chief financial officer; and

(ii) an operation manager, site manager, or any employee who may present a risk of diversion.

~~[(9)]~~ (17) "Laboratory permittee" means a person possessing an industrial hemp laboratory permit that the department issues under this chapter.

~~[(10)]~~ (18) "Licensee" means a person possessing an industrial hemp producer license that the department issues under this chapter.

~~[(11) "Medicinal dosage form" means:]~~

~~[(a) a tablet;]~~

~~[(b) a capsule;]~~

~~[(c) a concentrated oil;]~~

~~[(d) a liquid suspension;]~~

~~[(e) a sublingual preparation;]~~

~~[(f) a topical preparation;]~~

~~[(g) a transdermal preparation;]~~

~~[(h) a gelatinous cube, gelatinous rectangular cuboid, or lozenge in a cube or rectangular cuboid shape; or]~~

~~[(i) other preparations that the department approves.]~~

~~[(12)] (19)~~ "Non-compliant material" means a hemp plant or hemp product that does not comply with this chapter, including a cannabis plant or product that contains a concentration of:

(a) 0.3% tetrahydrocannabinol or greater by dry weight[-]; or

(b) 0.3% delta-8-tetrahydrocannabinol or greater by dry weight.

~~[(13)] (20)~~ "Permittee" means a person possessing a permit that the department issues under this chapter.

~~[(14)] (21)~~ "Person" means:

(a) an individual, partnership, association, firm, trust, limited liability company, or corporation; and

(b) an agent or employee of an individual, partnership, association, firm, trust, limited liability company, or corporation.

~~[(15)] (22)~~ "Research pilot program" means a program conducted by the department in collaboration with at least one licensee to study methods of cultivating, processing, or marketing industrial hemp.

~~[(16)] (23)~~ "Retailer permittee" means a person possessing an industrial hemp retailer permit that the department issues under this chapter.

~~[(17)] (24)~~ "State hemp production plan" means a plan submitted by the state to, and approved by, the United States Department of Agriculture in accordance with 7 C.F.R. Chapter 990.

(25) "Synthetic cannabinoid" means any cannabinoid that:

(a) was chemically synthesized from starting materials other than a naturally occurring cannabinoid; and

(b) is not a derivative cannabinoid.

(26) "Tetrahydrocannabinol" or "THC" means a substance derived from cannabis or a synthetic cannabinoid equivalent as described in Subsection 58-37-4(2)(a)(iii)(AA).

(27) "Total cannabidiol" or "total CBD" means the combined amounts of cannabidiol and cannabidiolic acid, calculated as "total CBD = CBD + (CBDA x 0.877)."

(28) "Total tetrahydrocannabinol" or "total THC" means the sum of the determined amounts of delta-9 THC and tetrahydrocannabinolic acid, calculated as "total THC = delta-9 THC + (THCA x 0.977)."

Section 2. Section **4-41-103.2** is amended to read:

4-41-103.2. Industrial hemp producer license -- Background checks.

(1) The department or a licensee of the department may cultivate or process industrial hemp.

(2) A person seeking an industrial hemp producer license shall provide to the department:

(a) the legal description and global positioning coordinates sufficient for locating the fields or greenhouses the person uses to grow industrial hemp; and

(b) written consent allowing a representative of the department and local law enforcement to enter all premises where the person cultivates, processes, or stores industrial hemp for the purpose of:

(i) conducting a physical inspection; or

(ii) ensuring compliance with the requirements of this chapter.

(3) An individual who has been convicted of a drug-related felony within the last 10 years is not eligible to obtain an industrial hemp producer license.

(4) The department may set a fee in accordance with Subsection 4-2-103(2) for the application for an industrial hemp producer license.

(5) A licensee may only market industrial hemp that the licensee cultivates or processes.

(6) (a) Each applicant for a license to cultivate or process industrial hemp shall submit to the department, at the time of application, from each key participant:

(i) a fingerprint card in a form acceptable to the Department of Public Safety;

(ii) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the registration of the individual's fingerprints in the Federal Bureau of Investigation Next

Generation Identification System's Rap Back Service; and

(iii) consent to a fingerprint background check by:

(A) the Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(b) The Bureau of Criminal Identification shall:

(i) check the fingerprints the applicant submits under Subsection (6)(a) against the applicable state, regional, and national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System;

(ii) report the results of the background check to the department;

(iii) maintain a separate file of fingerprints that applicants submit under Subsection (6)(a) for search by future submissions to the local and regional criminal records databases, including latent prints;

(iv) request that the fingerprints be retained in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service for search by future submissions to national criminal records databases, including the Next Generation Identification System and latent prints; and

(v) establish a privacy risk mitigation strategy to ensure that the department only receives notifications for an individual with whom the department maintains an authorizing relationship.

(c) The department shall:

(i) assess an individual who submits fingerprints under Subsection (6)(a) a fee in an amount that the department sets in accordance with Section 63J-1-504 for the services that the Bureau of Criminal Identification or another authorized agency provides under this section; and

(ii) remit the fee described in Subsection (6)(c)(i) to the Bureau of Criminal Identification.

Section 3. Section **4-41-103.4** is amended to read:

4-41-103.4. Industrial hemp laboratory permit.

(1) The department or a laboratory permittee of the department may test industrial hemp and industrial hemp products.

(2) The department or a laboratory permittee of the department may dispose of non-compliant material.

(3) A laboratory seeking an industrial hemp laboratory permit shall:

(a) demonstrate to the department that:

(i) the laboratory and laboratory staff possess the professional certifications required by department rule;

(ii) the laboratory has the ability to test industrial hemp and industrial hemp products using the standards, methods, practices, and procedures required by department rule;

(iii) the laboratory has the ability to meet the department's minimum standards of performance for detecting delta-9 tetrahydrocannabinol (THC) concentration levels and delta-8 tetrahydrocannabinol concentration levels; and

(iv) the laboratory has a plan that complies with the department's rule for the safe disposal of non-compliant material; and

(b) provide to the department written consent allowing a representative of the department and local law enforcement to enter all premises where the laboratory tests, processes, or stores industrial hemp, industrial hemp products, and non-compliant plants for the purpose of:

(i) conducting a physical inspection; or

(ii) ensuring compliance with the requirements of this chapter.

(4) An individual who has been convicted of a drug-related felony within the last 10 years is not eligible to obtain a license under this chapter.

(5) The department may set a fee in accordance with Subsection 4-2-103(2) for the application for an industrial hemp laboratory permit.

Section 4. Section **4-41-105** is amended to read:

4-41-105. Unlawful acts.

(1) It is unlawful for a person to:

(a) cultivate, handle, process, or market living industrial hemp plants, viable hemp seeds, leaf materials, or floral materials derived from industrial hemp without the appropriate license or permit issued by the department under this chapter[-];

~~[(2)]~~ (b) ~~[It is unlawful for any person to]~~ distribute, sell, or market an industrial hemp product that is not registered with the department pursuant to Section 4-41-104[-];

(c) distribute, sell, or market a product that contains greater than 0.3% of either total THC or delta-8 THC under this chapter;

219 (d) sell a cannabinoid identified by the department as psychoactive under this chapter;
220 (e) transport outside the state extracted material or final product that exceeds the
221 acceptable hemp THC level; or

222 (f) produce, sell, or use a cannabinoid product that is:

223 (i) added to a conventional food or alcoholic beverage;

224 (ii) marketed or manufactured to be enticing to children; or

225 (iii) smokable flower.

226 ~~[(3)]~~ (2) The department may seize and destroy non-compliant material.

227 ~~[(4)]~~ (3) Nothing in this chapter authorizes any person to violate federal law,
228 regulation, or any provision of this title.

229 Section 5. Section **4-41-204** is amended to read:

230 **4-41-204. Department to make rules regarding cultivation and processing.**

231 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
232 Administrative Rulemaking Act:

233 (1) to ensure:

234 (a) cannabis cultivated in the state pursuant to this chapter is cultivated from
235 state-approved seed sources; and

236 (b) a private entity contracted to cultivate cannabis has sufficient security protocols;
237 and

238 (2) governing an entity that puts cannabis into a ~~[medicinal]~~ dosage form, including
239 standards for health and safety.